

# The Real Estate News



**Dora**  
Department of Regulatory Agencies  
Division of Real Estate

Winter  
2014



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COLORADO REAL ESTATE COMMISSION

COLORADO BOARD OF MORTGAGE LOAN  
ORIGINATORS

COLORADO BOARD OF REAL ESTATE  
APPRAISERS

COLORADO CONSERVATION EASEMENT  
OVERSIGHT COMMISSION

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Member, The Association of Real Estate License Law Officials  
(ARELLO)

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## *Director's Corner*

**Marcia Waters,  
Division Director**

### **Broker Commissions: When the Real Estate Commission May Become Involved Broker**

We have been hearing about issues regarding broker commissions lately. Below are some of the scenarios we have seen, which may or may not violate the Colorado Real Estate Commission's (the "Commission") rules and regulations.

Scenario 1: The seller engages a "flat fee" broker to sell his property. In the Exclusive Right to Sell Contract, the seller and the seller's broker agree that the cooperating broker's commission will also be a flat fee. The seller receives a purchase offer from a buyer, who is represented by a "percentage" broker. As the parties are negotiating

the purchase terms, it becomes apparent that the seller's agent's agreement to pay a flat fee to the buyer's broker is contrary to what the buyer and the buyer's broker agreed upon regarding compensation. The buyer and the buyer's broker agreed that the buyer's broker would receive a percentage of the sales price as the broker's compensation.

The flat fee offered is significantly less than the amount negotiated between the buyer and the buyer's broker. Furthermore, the buyer and the buyer's broker agreed that while the buyer's broker will seek compensation from the

listing brokerage firm and the seller's broker, ultimately the buyer is obligated to pay the broker's commission. While the buyer has the money necessary to complete the purchase transaction, he did not really contemplate having to pay his broker's commission out of pocket. He does not have sufficient funds to pay the remaining commission owed. Given his predicament, the buyer decides that payment of his broker's commission will now become an additional term that he needs to negotiate with the seller.

The buyer instructs his broker to include in the

## *Director's Corner Continued*

“Additional Provisions” of the purchase offer that the seller must pay the buyer’s broker’s commission. The broker is hesitant to include such terms because the Real Estate Commission’s Rule F-2(b) prohibits a broker, who is not a principal party to the contract, to insert personal provisions, disclaimers or exculpatory language in favor of the broker in the “Additional Provisions” section of a Commission-approved form.

**Question:** If the buyer’s broker includes a clause in the “Additional Provisions” that indicates that the seller will pay the buyer’s broker’s commission, and this clause is added at the buyer’s direction, is the broker in violation of the Commission Rule?

**Answer:** If the Commission were to receive a complaint about the above set of circumstances, staff would inquire as to whom required the inclusion of the clause about the commission payment. If the provision was added at the direction of the buyer, and not by the broker, it would not be a violation of the license law. In the above scenario, the commission has become a point of negotiation for the buyer. If buyer

completes the transaction with the seller’s broker paying the buyer’s broker a flat fee, the buyer will be responsible for the outstanding commission amount that he previously negotiated with his broker. Since he does not have the money to pay the commission, he is now in a position to potentially be sued by his broker.

**Scenario 2:** The seller has engaged a “percentage” broker to represent him in the sale of his home. The seller receives and accepts a purchase offer from a buyer who is represented by a “flat fee” broker. The seller and the seller’s broker have agreed that the cooperating broker will be offered a percentage of the sales price as a commission. However, the buyer’s broker is requesting to be paid a flat fee, which is less than the cooperating commission amount agreed upon by the seller and the seller’s broker. The buyer’s broker memorializes the commission amount sought in a document to the seller’s broker. The seller’s broker places the document in the transaction file without any disclosure or discussion with the seller. At closing, the buyer’s broker is paid the flat fee requested. The seller’s broker collects his fee including the amount that would

have been paid to the buyer’s broker if he had sought a percentage-based commission, instead of a flat fee.

**Question:** Is there a problem with how the seller’s broker handled the commission to the cooperating broker?

**Answer:** Yes. The seller’s broker, regardless of whether he is a single agent or a transaction broker, is required to exercise reasonable skill and care for the seller, including advising the seller regarding the transaction. The seller’s broker should have disclosed to the seller that, while the buyer’s broker was offered the agreed upon percentage-based commission, the buyer’s broker elected to accept a flat fee. Depending on the agreement between the seller and his broker, the seller’s broker may be entitled to keep the outstanding amount not sought by the buyer’s broker.

**Scenario 3:** The buyer contacts her buyer’s agent and requests to see 1234 Main St., Fruita, Colorado. The buyer’s agent pulls the listing information from the local multiple listing service and discovers that cooperating commission



## BACKGROUND AND EXPERIENCED INCLUDED

THE DIVISION OF REAL ESTATE FINDS QUALITY REPLACEMENTS FROM A STRONG  
FOUNDATION



December 2013 the Division of Real Estate watched Natalie Lutz move up the ranks of the Division to the new Manager of the Conservation Easement Program. Natalie was previously an investigator in the Conservation Easement

*"As a native to Colorado, I'm excited to be a part of protecting our natural and working landscapes. Colorado is such an amazing place to live that we need to make certain we are protecting open space, wildlife habitat and scenic views so the high quality of life here continues. I'm honored to be managing such an innovative conservation program."*



December 2013 the Division of Real Estate watched Garred Lyle move up the ranks of the Division as the lead for the Real Estate Broker Investigation Program. Garred was previously an investigator for the Division.

*"Prior to getting my real estate license in 2006, I had experience as both a 1st time home buyer and an unsophisticated seller who placed complete trust in my real estate agents. I understand how this often overwhelming and bewildering experience can make many consumers most vulnerable during a time that can have significant financial and emotional impact on their lives. I want to do my*

### Director's Corner Continued

with the buyer that the commission sought will be a percentage in excess of the flat fee. The buyer's agent refuses to show the property to the buyer because she is unwilling to accept the minimal flat fee offered by the seller's broker.

Question: Is the buyer's agent refusal to show properties a violation of the license law?



Answer: Yes. All brokers, transaction brokers and single agents, are required to exercise reasonable

skill and care for the party (or parties) that they represent in the transaction. Additionally, a buyer's agent has the duty and obligation to promote the interests of the buyer with the utmost good faith, loyalty and fidelity. Refusing to show properties based on the cooperating commission is not consistent with the expectations of a broker under the Brokerage Relationship Act. If a property matches the criteria sought by the buyer, the buyer's agent should discuss the disparity regarding the broker's commission. Depending on what the buyer and the buyer's broker agreed upon,

the buyer may still be responsible for paying the difference in the commission amounts. It is important for the buyer to be aware of these issues so that she can make the best decision for her particular situation.

In addition to violating the Brokerage Relationship Act, brokers that place their compensation before the needs of their principals, may be found to be unworthy. Unworthiness occurs when a broker conducts business in a manner as to endanger the interest of the public.

## THE INS AND OUTS OF PROPERTY MANAGEMENT

Peter Meer MBA, MPM, President of Meer & Company, Inc., specializes in residential property management in Denver. He currently manages 150 single family homes.

A Property Management Agreement should at the very minimum address:

- Duration of the relationship;
- The parties;
- Fees for the manager's services, including disclosure of any mark-ups (Commission Rule E-1);
- Tenant selection criteria, who will collect the necessary date, what source will be used as well as full compliance with the Fair Housing and Fair Credit Acts;
- Posting of eviction notices;
- Ownership interest in any company which will be providing maintenance or other services to the landlord;
- Identity of the entity responsible for holding the security deposit and how interest is handled;
- Process to be followed for any subsequent transfer of the landlord's monies, security deposits, keys and documents (Commission rule E-16);
- Requirement that the

landlord receive regular monthly accounting of all funds received and disbursed.



## It Didn't Sell, I Found a Tenant, Now I Will Manage it Long Term: A Property Management Perspective

*My last article in the fall edition was: "It Didn't Sell, but I can Find a Tenant". The article focused on Commission Position Statement (CP-27) which details needed competency in Leasing and Property Management issues. This article will focus on your decision to do long-term property management.*

Since it was so simple to lease it, how difficult can it be to do long-term property management? It is difficult enough that the largest number of complaints to the Real Estate Commission deals with Property Management issues. CP-27 directs you to the Brokerage Duties Addendum to Property Management Agreement (BDA55-5-09) that should be part of a property management agreement drafted by an attorney. You might find a property management agreement for free by going on-line. That would be the first misstep on the road to a close encounter with the Commission enforcement section. Retain an attorney with knowledge of Colorado real estate rules and regulations.

Space limitations prohibit in depth discussion of Trust Accounts and Record Keeping. However, you should be aware of: C.R.S. 12-61-113(1)(g) dealing with money belonging to others; Rule E-1(g) defines money belonging to others; Rule E-1(n) points out the deposit

of funds must be within five (5) business days of receipt; and Rule E-16 deals with transfer of security deposits and tenant authorization that is required.

The Statutes, (CP-27), as well as all the rules and regulations do not read like a John Grisham novel. However, failure to understand and comply with the above is another misstep potentially causing the close encounter discussed about.

I said this in the last article. However, it is worth repeating. The Commission considers property management to be a complex area of practice. C.R.S. 12-61-113(1)(n) requires that a broker be competent and worthy in the performance of their duties so as not to endanger the interest of the public. How comfortable are you and your broker with your competency level in this niche area of real estate practice. Please consider all the above before you make that "easy" decision to manage the property long term?



Remember, before the entity turns over a delinquent account to a collection agency or attorney, it must send the unit owner a written notice of delinquency specifying:

- the total amount due, with an accounting of how the total was determined;
- whether the opportunity to enter into a payment plan exists and instructions for contacting the entity to enter into the payment plan;
- The name and contact information for the individual the owner may contact to request a copy of the owner's ledger to verify the amount of the debt;
- and that action is required to cure the delinquency and failure to do so within 30 days may result in the account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the owner's property and other remedies available under Colorado law.



## HOAs NOW REQUIRED TO ESTABLISH DEBT COLLECTION POLICY

### **HB13-1276 (HOA DEBT COLLECTION)**

This bill requires HOAs to establish a collection policy that at a minimum specifies: the date on which assessments must be paid to the association and when an assessment is considered past due; any late fees and interest charged; any returned-check charges; and the circumstances under which a delinquent owner is entitled to enter into a payment plan and the minimum terms of the payment plan.

The association, holder or assignee of the association's lien, may only proceed to foreclosure if the balance of the assessments and charges secured by the lien equals or exceeds 6 months of common assessments. The association board must vote on an individual basis to proceed with foreclosure on any specific unit. Owners that are delinquent will have a one-time opportunity to enter into a payment plan to bring their account current, and the payment plan must be for a minimum of six months. The owner must make the payments under the plan as well as pay their current monthly assessment obligations. If one fails to make these payments, the association may proceed with collections.

## News, Notes and Information Around the Division of Real Estate

### Colorado Real Estate Commission

#### 2014 Forms and Contracts

As a reminder, the 2014 contracts and forms are posted for educational purposes and not for use before January 1, 2014. The Division will have writeable versions posted to the website before this date. Please visit the Division's Contracts and Forms Web Page to review the red-line and clean DRAFTS of the 2014 contracts and forms. (You will need Adobe Acrobat version 10 or later to access the files.)

#### E&O Renewal Season

The Division of Real Estate would like to remind all active broker licensees that E&O renewal season is once again upon us. If your policy expired on January 1, 2014, please be advised that the Division will be performing a full E&O audit in February of 2014 to ensure compliance with the E&O insurance requirement. If you are renewing a policy that expired on January 1, 2014, you must purchase the renewal before January 31, 2014 and the policy must be effective January 1, 2014 to be considered compliant.

Please do not submit a physical copy of your E&O coverage to the Division unless you are submitting an application to change your employment or status with us, as we will be working with several E&O carriers to verify coverage electronically. If you fail to receive your notice from your E&O carrier, it is suggested that you utilize the online renewal process offered by many carriers.



### Board of Real Estate Appraisers

#### USPAP Changes for 2014

USPAP 2014-15 is available. With an effective date of January 1, 2014 appraisers are encouraged to become familiar with the changes.

- Video: 2014-15 USPAP Summary of Actions  
A video discussion highlighting the changes to the 2014-15 edition of USPAP.
- USPAP Q&A  
The Appraisal Standards Board (ASB) has issued Q&As specifically on the 2014-15 edition of USPAP.
- USPAP Summary of Actions Document  
To view a detailed written description of the changes, please see the USPAP Summary of Actions.

#### Order the 2014 Colorado Real Estate Manual (Free eBook Included!)

The 2014 Colorado Real Estate Manual is currently available for order through LexisNexis. Each order for the print version comes with an eBook download at no additional charge.

The Manual is not only a beneficial resource for new licensees, but also for existing real estate brokers, appraisers, and other real estate professionals by providing current relevant statutes and requirements for practicing in Colorado. It also includes current Division of Real Estate rules and position statements for brokers, appraisers, mortgage loan originators, and conservation easements. An excellent resource for real estate professionals, the Manual provides history, new laws and requirements, descriptions, and landmark case law.

You can order the Manual today from LexisNexis through their online bookstore or by telephone. To order by phone call Michael LaLiberte, a LexisNexis sales representative, at 1-800-306-5230 x2478170.

### Board of Mortgage Loan Originators

#### Instructions for Reinstating an Expired License (January 1st through February 28th)

- If you have failed to renew your license and registration prior to December 31, 2013, your license will have expired and you cannot originate loans in Colorado until you have reinstated or re-apply for your license.
- Reinstatement is available from January 1st through February 28th of each year. The fee for the Colorado reinstatement will be one and a half times the renewal fee.
- If you fail to reinstate your license and/or registration on or before the last day of February, you will be required to reapply for that license. Contact both NMLS and the Colorado Division of Real Estate for details on the reapplication process.

#### MLO 2014 Update Course Available March 1st

Starting in March, Mortgage Loan Originators can take the 2014 version of the Colorado Two (2) Hour Mandatory Update Course for Mortgage Loan Originators.

Providers offering the course will take part in a Division-sponsored "Train the Trainer" events ensuing that all licensees will receive the same information no matter from whom they choose to take the course. Material and information featured in each course is the most up-to-date information available when it comes to state compliance. Instructors follow Division, and Board outlines and sometimes add in their real world experiences to enhance the materials.



## News, Notes and Information Around the Division of Real Estate

### CONSERVATION EASEMENT OVERSIGHT COMMISSION

#### 2014 Tax Credit Certificate Fees

Starting in 2014, Senate Bill 13-221 established a pre-approval process prior to the tax credit claim for conservation easement donations made on or after January 1, 2014. The Division of Real Estate (Division) has announced the 2014 application fees for the tax credit certificate (TCC) and preliminary advisory opinion (PAO). Click here for the application forms.

- TCC Application for 2011-2013 Conservation Easement Donations Fee: **\$305**
- Tax Credit Certificate Application for 2014 Conservation Easement Donations Fee: **\$4,600**
- PAO for Conservation Easement Appraisal: **\$2,300**
- PAO for Qualified Conservation Contribution: **\$2,300**

#### 2013 Tax Credit Cap

The 2013 Tax Credit Cap is still available. Landowners, who donated **a conservation easement on or after January 1, 2011 but prior to January 1, 2014, can apply for a 2013 tax**

**credit certificate.** Click here for the application form and nonrefundable \$305 fee. For an update on the 2013 tax credit cap,

#### Certification Reinstatement

Were you too busy closing end of the year conservation easements and did not get a chance to submit your certification renewal application to the Division by December 31st? **Rule A-5 allows a certification that has expired to be reinstated within one year after the date of expiration if a proper renewal application and nonrefundable fee is submitted to the Division.** Certification will be effective on date of reinstatement. Don't forget that conservation easement holders may not accept a conservation easement for which a state tax credit is claimed if their certification has expired. Click here for the 2014 renewal application form, project list and nonrefundable \$1,037 fee.

#### No DR1299 Tax Forms

Senate Bill 13-221 **repealed** section 24-33-112 of the Colorado Revised Statutes where an organization had to complete and file an annual tax form with the Department of Revenue and the Division before accepting a conservation easement that generated a tax credit. **Therefore, the DR1299 tax**

**form no longer exists for 2014 and beyond.**

#### No Appraiser Submission of Conservation Easement Appraisals, Affidavits, and Fees

Senate Bill 13-221 **repealed** section 12-61-719 of the Colorado Revised Statutes that established any appraiser who conducts an appraisal for a conservation easement must submit a copy of the appraisal, affidavit, and prescribed fee to the Division. Starting January 1, 2014, appraisers **no longer need to submit conservation easement appraisals, appraiser affidavits and the prescribed fee to the Division.** In 2014, the Division intends to repeal BOREA Rules 16.1-16.3.

*\*Please note that the appraisers may need to complete the affidavit for landowners, who donated a conservation easement on or after January 1, 2011 but prior to January 1, 2014 and intend to apply in 2014 for a tax credit that is valid to offset 2013 tax liability.*



## **DISCIPLINE**

This notice serves to inform the public of the current and/or most recent disciplinary action taken against the individual listed. It DOES NOT, nor should it be intended to, serve as a complete listing of any and all discipline taken against the licensee. For complete license information including license status and additional disciplinary actions, please visit [www.dora.colorado.gov/dre](http://www.dora.colorado.gov/dre) and click "Division of Real Estate."

### **Board of Real Estate Appraisers**

*Alphabetical by last name, real estate appraisers only. List contains discipline from October 1, 2013 - December 31, 2013.*

- Floyd, Edmund - *Voluntary Surrender*
- Sprague, Spencer W - *Voluntary Surrender, Stayed Fine and Public Censure*
- Young, Martha L - *Voluntary Surrender, Stayed Fine and Public Censure*

### **Colorado Real Estate Commission**

*Alphabetical by last name, real estate brokers only. List contains discipline from October 1, 2013 -*

- |   |  |
|---|--|
| • Adams, Hender Marlo - <i>Public Censure, Suspension, Fine, Coursework and Probation Requiring Supervision</i>   | • <i>Revocation and Stayed Fine</i>  |
| • Bolen, Filip - <i>Revoked</i>   | • Jacoby, Michael Allen - <i>Public Censure and Revocation</i>   |
| • Chavez, Perry A. - <i>Public Censure, Revocation and Fine</i>   | • Knisley, Jennifer M. - <i>Public Censure, Suspension, Fine, Coursework and Probation Requiring Supervision</i> |
| • Ellefson, Benjamin Alan - <i>Public Censure, Suspension, Fine, Coursework and Probation Requiring Supervision</i>   | • Miller, Richard James - <i>Public Censure, Fine and Coursework</i>   |
| • Geller, Gregory D. - <i>Public Censure, License Downgrade, Fine and Coursework</i>  | • Palmer, Martha R. - <i>Public Censure, Vountary Relinquishment and Stayed Fine</i>                             |
| • Heartsill, Patricia (aka) Patricia Eaton - <i>Public Censure, Peranent Surrender and Stayed Fine</i>  | • Phan, Adrian G. - <i>Public Censure, Fine and Coursework</i>   |
| • H&S Telluride Ventures (dba Mtn Mgmt at Telluride, Mtn Mgmt at Ridgway, Ouray Realty & Investment Co., Ouray Realty Rentals, Inc., Ouray Rentals, Inc, and Ridgway Rentals and Realty) - <i>Public Censure, Permanent Surrender and Stayed Fine</i> | • Reddy Realty LLC - <i>Public Censure, Permanent Surrender and Stayed Fine</i>                                  |
| • Jefferson, Lisa Renee - <i>Permanent Revocation and Fine</i>  | • Rivera, Michael - <i>Public Censure, Fine, Coursework and Restricted License Requiring Supervision</i>         |
| • Jenkins, Jasmine J. - <i>Public Censure, Permanent</i>  | • Swenson, Steve - <i>Public Censure, Permanent Surrender, Stayed Fine</i>                                       |
|   | • Woodbury, Shirley - <i>Public Censure, Surrender and Stayed Fine</i>   |

### **Board of Mortgage Loan Orginators**

*Alphabetical by last name, mortgage loan orginators only. List contains discipline from October 1, 2013 - December 31, 2013.*

- Bustamante, Michael - *Public Censure, Fine, Restitution and Suspension*
- Luong, Oai - *Public Censure, Permanent Surrender and Stayed Fine*
- Shaffer, Kellee - *Public Censure, Voluntary Relinquishment and Stayed Fine*



## The New Conservation Easement Tax Credit Certificate Application and Review Process for 2014 - The Overview

### **Understanding the Steps of the New Conservation Easement SB13-221 Application Process**

Applications for a conservation easement Tax Credit Certificate are submitted to the Division of Real Estate (Division). Applications with all required supporting documents are deemed complete and the Division's review begins. The application is date stamped and the dollar amount of the applied for tax credit is assigned to the application and encumbered from the \$45 million tax credit cap.

During the staff examination of applications, the conservation purpose of the easement and its appraisal are reviewed by a team of two examiners overseen by a program manager. Staff will engage the applicant and any individual associated with the materials in the application in order to address any potential issues with the application and be completed in an average of 120 days. A positive review will result in the issuance of the applied for tax credit certificate.

Applications with issues of concern are presented to the Conservation Easement Oversight Commission (CEOC) and/or the Director of the Division (Director). The CEOC or the Director may direct staff to request more information and give

the applicant 60 days to fulfill the request. Once the specific additional materials are received, the staff will begin a second examination of the application to be completed in 90 days.

If the issues of concerns are not resolved in the second examination, the Director may request a second appraisal. A second appraisal will confirm or refute the value of the easement. Should the value be confirmed, the tax credit certificate will be issued. A denial at this stage, while final, does not necessarily end the process. The applicant has 30 days in which to submit a written appeal that entitles them to an administrative hearing and an administrative law judge will determine the outcome of the appeal.

The application process provides the applicant multiple opportunities to show the validity of their conservation easement donation and receive a tax credit certificate.



## The New Conservation Easement Tax Credit Certificate Application and Review Process for 2014 - The Steps

### STEP ONE: RECEIPT

- APPLICATION RECEIVED BY THE DIVISION
- CHECK FOR REQUIRED DOCUMENTATION:
  - RECORDED DEED OF CONSERVATION EASEMENT
  - FINAL APPRAISAL
  - BASELINE DOCUMENT REPORT
  - APPLICATION FEE
  - PROOF OF SIGNATORY AUTHORITY (IF APPLICABLE)
- AN APPLICATION MISSING ANY OF THESE ITEMS WILL NOT BE DEEMED RECEIVED.
- APPLICATION WITH THESE ITEMS ARE "DEEMED COMPLETE."

### STEP TWO: ASSIGNMENT OF TAX CREDIT CERTIFICATE

- APPLICATION MUST FIRST BE "DEEMED COMPLETE"
- THE DOLLAR AMOUNT REQUESTED IN THE APPLICATION WILL BE ENCUMBERED IN THE CAP.
  - FIRST COME, FIRST SERVED
  - ENSURES THAT EARLY APPLICATIONS THAT REQUIRE A LENGTHY REVIEW DO NOT LOSE OUT TO LATER APPLICATIONS FOR WHICH THE REVIEW IS COMPLETED QUICKLY
  - COMPLEX PROJECTS WILL NOT BE NEGATIVELY IMPACTED BY THE REVIEW PROCESS.
- ONCE ENCUMBERED, THE DOLLAR AMOUNT IS DEDICATED TO THE APPLICATION AND WILL NOT BECOME AVAILABLE TO ANY LATER APPLICATION (EVEN IF THE FIRST APPLICATION IS DENIED).

### STEP THREE: EXAMINATION

- PARALLEL REVIEW OF CONSERVATION PURPOSE AND APPRAISAL.
- REVIEWS WILL BE CONDUCTED USING OBJECTIVE CRITERIA.
- STAFF WILL COMMUNICATE WITH LANDOWNER, HOLDER, APPRAISER, BASELINE REPORT AUTHOR, TAX CREDIT BROKER AND ANY PARTY INVOLVED IN THE TRANSACTION.
- STAFF WILL WORK TO RESOLVE ANY CONCERNS.
- A WRITTEN EXAMINATION REPORT.
- EXAMINATIONS WILL BE COMPLETED IN AN AVERAGE OF 120 DAYS.

*IF NO POTENTIAL DEFICIENCIES ARE FOUND, THE DIVISION WILL ISSUE THE TAX CREDIT CERTIFICATE.*

### STEP FOUR: PRESENTATION TO THE AUTHORITIES

- APPLICATION IS PRESENTED TO THE CONSERVATION EASEMENT OVERSIGHT COMMISSION AND/OR THE DIRECTOR.
- THE COMMISSION AND/OR DIRECTOR MAY APPROVE THE APPLICATION AND THE DIVISION WILL ISSUE THE TAX CREDIT CERTIFICATE,  
OR
- THE COMMISSION AND/OR DIRECTOR MAY DIRECT STAFF TO REQUEST MORE INFORMATION FROM THE LANDOWNER.
- THE LANDOWNER WILL HAVE 60 DAYS TO PROVIDE THE ADDITIONAL DOCUMENTS.

*IF THE POTENTIAL DEFICIENCIES ARE RESOLVED TO THE SATISFACTION OF THE COMMISSION AND/OR DIRECTOR, THE DIVISION WILL ISSUE THE TAX CREDIT CERTIFICATE.*

### STEP FIVE: SECOND APPRAISAL

- A POTENTIAL DEFICIENCY THAT IS NOT RESOLVED IN THE EXAMINATION PROCESS MAY BE CAUSE FOR THE DIRECTOR, IN CONSULTATION WITH THE COMMISSION, TO REQUEST A REVIEW OR SECOND APPRAISAL.

*IF THE SECOND APPRAISAL CONFIRMS THE ORIGINAL, THE DIVISION WILL ISSUE THE TAX CREDIT CERTIFICATE.*

*IF THE SECOND APPRAISAL CONFIRMS THE POTENTIAL DEFICIENCY, THE DIVISION WILL ISSUE A FINAL DETERMINATION OF DENIAL.*

### STEP SIX: APPEAL

- A FINAL DETERMINATION OF DENIAL DOES NOT NECESSARILY END THE PROCESS.
- LANDOWNER HAS 30 DAYS TO SUBMIT A WRITTEN APPEAL.
- APPLICATION WILL BE REFERRED TO THE OFFICE OF ATTORNEY GENERAL.
- AN ADMINISTRATIVE HEARING WILL BE HELD AND AN ADMINISTRATIVE LAW JUDGE WILL DETERMINE THE OUTCOME OF THE APPLICATION.

*THE DIVISION MAY ENTER INTO SETTLEMENT DISCUSSIONS WITH THE LANDOWNER AT ANY TIME DURING THE APPLICATION REVIEW PROCESS BEFORE AN APPEAL IS REQUESTED. ONCE AN APPEAL IS REQUESTED, SETTLEMENT DISCUSSIONS ARE HANDLED BY THE ATTORNEY GENERAL ON BEHALF OF THE DIVISION.*



# The Division of Real Estate Winter Meeting Calendar

DATE OF MEETING	COMMISSION / BOARD	TIME	LOCATION
<b>JANUARY</b>			
<b>1.9.14</b>	BOARD OF REAL ESTATE APPRAISERS	9 - 11 AM	1560 BROADWAY, DENVER CO 80202 CONFERENCE ROOM 110D
<b>1.15.14</b>	BOARD OF MORTGAGE LOAN ORIGINATORS	9 - 11 AM	1560 BROADWAY, DENVER CO 80202 CONFERENCE ROOM 110D
<b>1.16.14</b>	CONSERVATION EASEMENT OVERSIGHT COMMISSION	1 - 3 PM	1560 BROADWAY, DENVER CO 80202 CONFERENCE ROOM 110B
<b>FEBRUARY</b>			
<b>2.3.14</b>	CONSERVATION EASEMENT OVERSIGHT COMMISSION	10 AM - 3 PM	1560 BROADWAY, DENVER CO 80202 CONFERENCE ROOM 1250C
<b>2.4.14</b>	COLORADO REAL ESTATE COMMISSION	9 - 11 AM	1560 BROADWAY, DENVER CO 80202 CONFERENCE ROOM 1250C
<b>MARCH</b>			
<b>3.6.14</b>	BOARD OF REAL ESTATE APPRAISERS	9 - 11 AM	1560 BROADWAY, DENVER CO 80202 CONFERENCE ROOM 1250C
<b>3.19.14</b>	BOARD OF MORTGAGE LOAN ORIGINATORS	9 - 11 AM	1560 BROADWAY, DENVER CO 80202 CONFERENCE ROOM 1250C



# January 2014 The Beginning of a New Era of Regulation in Mortgage Lending

T. K. Jones, CMB, CML  
Co-Chair, Legislative  
and Regulatory  
Affairs Committee  
Colorado Mortgage  
Lenders Association



One year ago, the Consumer Financial Protection Bureau (CFPB) issued its first group of 7 final rules designed to reform the way mortgages are made and serviced in the United States of America. Almost all of those final rules had a one year date of implementation, and those dates of implementation are upon us now in January of 2014.

These 7 rules are additions to the already existing body of rules and regulation under the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), the Home Ownership and Equity Protection Act (HOEPA) and the Equal Credit Opportunity Act (ECOA). These are just 4 of the 19 enumerated Consumer protection statutes transferred by the Dodd Frank Act to the CFPB for rule making and enforcement.

The purpose of this article is twofold: first to give readers an idea of how to navigate the CFPB's excellent website and how to use its resources to be able to better understand the rules the CFPB has promulgated; and second to give a very high level summary of what each rule covers. It is very important for anyone who wants to understand the breadth and coverage of these rules to understand how to use the CFPB's website and then to use the website and its tools to review the materials found there in depth.

Fortunately for all of us in the industry, the CFPB is specifically required by the Dodd-Frank Act to

comply with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which requires that Federal Agencies with rule making authority must provide a guide to small businesses to assist them in complying with rules issued by those Agencies. The CFPB has issued "Small Entity Compliance Guides" for each of the 7 rules above. These guides, which summarize each of the rules and are presented in a question and answer format, along with explanatory videos about each of the rules can be found on the CFPB's website at: <http://www.consumerfinance.gov/mortgage-rules-at-a-glance/>. The "Mortgage

## THE 7 CFPB'S FINAL RULES AND THEIR EFFECTIVE DATES ARE:

- **THE ABILITY TO REPAY AND QUALIFIED MORTGAGE RULE:**  
*EFFECTIVE JANUARY 10, 2014*
- **THE 2013 HOME OWNERSHIP AND EQUITY PROTECTION ACT (HOEPA) RULE:**  
*EFFECTIVE JANUARY 10, 2014*
- **THE 2013 LOAN ORIGINATOR RULE:**  
*EFFECTIVE JANUARY 1, 2014*
- **THE EQUAL CREDIT OPPORTUNITY ACT (ECOA) VALUATIONS RULE:**  
*EFFECTIVE JANUARY 18, 2014*
- **THE TILA HIGHER-PRICED MORTGAGE LOANS APPRAISAL RULE:**  
*EFFECTIVE JANUARY 18, 2014*
- **THE TILA ESCROW RULE:**  
*EFFECTIVE JUNE 1, 2013*
- **THE 2013 RESPA AND TILA MORTGAGE SERVICING FINAL RULES:** *EFFECTIVE JANUARY 10, 2014*



Rules at a Glance" page contains links to both the small entity compliance guides and the videos (in the "Compliance aids" column), as well as links to the full text of each rule as published by the CFPB along with links to the rules as published in the Federal Register and other resources that you may find helpful in learning more about each rule. A little time spent familiarizing yourself with the resources on the "Mortgage Rules at a Glance" page will go a long way in furthering your understanding of what the CFPB now requires of you, your company and your industry.

The CFPB also has a video overview of all of these rules which you can watch at: <http://www.youtube.com/watch?v=wxKnoFzSYI>.

Some of the rules have exemptions for small creditors and for small creditors who serve rural and underserved areas: Here is a link to the CFPB's list of rural and underserved counties: <http://www.consumerfinance.gov/blog/final-list-of-rural-and-underserved-counties-for-use-in-2014/>

Finally, in reviewing the high level rule summaries below, you will note several references to Higher Priced Mortgage Loans (HPML) and the Average Prime Offer

Rate (APOR). It is important to note that a Higher Priced Mortgage Loan is not the same thing as a High Cost Mortgage as set forth in the HOEPA rule below. References to HPMLs and the APOR are found in the Ability to Repay Rule, The TILA Higher-Priced Mortgage Loans Appraisal Rule, and the TILA Escrow Rule. TILA defines HPML and APOR as follows:

*(1) "Higher-priced mortgage loan" (HPML) means a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:*

*(i) By 1.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; (Ed. Note: Conforming Loans)*

*(ii) By 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;(Ed. Note Jumbo Loans) or*

*(iii) By 3.5 or more percentage*

*points for loans secured by a subordinate lien.*

*(2) "Average prime offer rate" (APOR) means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Bureau publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Bureau uses to derive these rates."*

In their "Small Entity Compliance Guide for TILA Higher-Priced Mortgage Loans Appraisal Rule", the CFPB provides a link to an APOR rate spread calculator, which automatically imports the applicable APOR to compare with APR: <http://www.ffiec.gov/ratespread/newcalc.aspx>

A caution when using this calculator: After you enter the date of lock in, the APR on the loan you wish to compare to the APOR, the fixed term and the lien status, and hit the "submit" button the calculator will return the "Rate Spread (percentage points)" number on the same screen just below the "Submit" and "Reset" buttons. If the rate spread is less than 1.5% for a first lien transac-



tion (in other words not an HPML) the result will show as "N/A". In other words the loan is not a HPML. If however the rate spread is 1.5% or greater, the actual rate spread will be shown in the same location. There is also a batch rate spread calculator link on the page that will allow you to calculate up to 10 loans at a time should you wish to do so.

Individual Rule Overviews: (Note: Rule titles are links to the relevant CFPB Small Entity Compliance Guide)

- **The Ability to Repay and Qualified Mortgage Rule** is effective with all new loan applications taken January 10, 2014 or after. The rule requires that a creditor make a "reasonable, good faith determination before or when consummating a mortgage loan that the consumer has a reasonable ability to repay the loan". The rule provides standards for determining the borrower's ability to repay as well as establishing a category of loans (called the "Qualified Mortgage" or "QM") where the creditor is presumed to have complied with the Ability to Repay rule if the loan originated meets the QM standard. The QM definition introduces the 3 point cap on fees and the maximum 43%

debt to income ratio along with the concept of safe harbor QMs, rebuttable presumption QMs (for HPMLs), temporary QMs and small creditor QMs. The rule sets forth penalties for failure to comply, it expands the time frame borrowers have to assert a violations under TILA and RESPA from 1 to 3 years, and in the case of defending against a foreclosure, removes the time limits for a borrower to assert a violation of the ability to repay rule altogether. Worthy of note here is that Dodd-Frank also prohibits a loan originator from steering a borrower to a loan where the borrower does not have the ability to repay the loan. While the CFPB has yet to issue their "anti-steering rules" (having stated that they will propose such rules in 2014), Dodd-Frank requires that where rules are not issued by January 21, 2014, the statutory language of Dodd-Frank will take effect. Therefore, even though the CFPB has not yet issued the anti-steering rules, come January 21st, Loan Originators could be subject to personal liability for up to 3 times the amount of their earnings on the loan in question for steering a borrower to a loan where it is ultimately determined that the borrower did not have the abil-

ity to repay the loan.

- **The 2013 Home Ownership and Equity Protection Act (HOEPA) Rule** is effective with loan applications taken on or after January 10, 2014. The rule lowers the previous thresholds for defining a High Cost Mortgage, it includes HELOCs as potential High Cost Mortgages, it requires additional disclosures, prohibits certain loan terms and requires that the consumer receive additional protections including homeownership counseling. (Note: the rule also requires that all loan applicants for federally-related mortgage loans (not just High Cost Mortgages) receive a list of housing counselors in their area). The rule defines what must be included when calculating points and fees for HOEPA coverage as well as what loan origination compensation must be included in the points and fees calculations. The rule adds a prepayment penalty coverage test.
- **The 2013 Loan Originator Rule** is effective January 1, 2014 for loans consummated on or after January 1st and where the loan originator receives compensation on or after January 1, 2014. The rule prohibits the use of



mandatory arbitration clauses and waivers of federal claims in loan agreements with borrowers effective June 1, 2013. It prohibits the financing of credit insurance and requires the use of the NMLS ID number for both individual loan originators and loan originator organizations on certain loan documents (application, note and security instrument) effective January 10, 2014. The rule expands the definition of who is considered a loan originator (for example a processor or other employee who "completes" an application for an originator or who relays the approved terms of a loan to the borrower in the loan originators absence, would be considered a loan originator and thus need to be licensed as required by the SAFE Act under the expanded definition). Further, the rule prohibits compensation to an originator based on terms of the loan or multiple loans, defines a "proxy for a transaction term" and establishes seven "effective safe harbors" for methods of payment of loan originator compensation. The rule is applicable to compensation both paid and received, which means that loan originators receiving

prohibited compensation are just as guilty of the violation as the entity paying the prohibited compensation. The rule does establish certain categories of permissible retirement or bonus profit based compensation plans. It defines who may pay the loan originator compensation and under what circumstances. The rule sets forth the qualification rules for individuals to be loan originators and what their employing organizations are required to do in their employment of loan originators. The rule also establishes record keeping requirements.

- **The Equal Credit Opportunity Act (ECOA) Valuations Rule**

is effective January 18, 2014 for applications received on or after January 18, 2014. The rule requires creditors to disclose to applicants within 3 days of application, that they have the right to receive copies of appraisals and written valuations. Further the rule requires that the creditor automatically send a free copy of all appraisals and all other written valuations (not just appraisals) i.e. AVMs, broker price opinions, etc. promptly upon completion or no later than 3 days prior to consum-

mation (whichever occurs first), regardless of whether credit is extended, denied, incomplete or withdrawn. The rule does permit charging the applicant a reasonable fee to cover the cost of preparing appraisals and other written valuations (unless otherwise prohibited or restricted by applicable law), but it does prohibit charging for copies of those appraisals or other written valuations even if the permitted fee has not been paid. Further, it prohibits the "up charging" of consumers by adding fees to the cost of preparing the appraisal or other written valuations.

- **The TILA Higher-Priced Mortgage Loans Appraisal Rule**

is effective January 18, 2014 for applications received on or after January 18, 2014. The rule sets forth additional appraisal requirements for Higher-Priced Mortgage Loans (HPML) and the appraisers performing such appraisals. It discusses the overlap between the ECOA Valuations Rule and the TILA HPML Appraisal Rule. It also requires that an additional appraisal be ordered if the property is a "flip" being purchased with a covered HPML, defines when a property is considered a "flip", and further



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specifies that the consumer cannot be charged for the additional appraisal.

- **The TILA Escrow Rule** was effective June 1, 2013 and requires that tax and insurance escrow accounts be established and maintained for a minimum period of 5 years (regardless of loan to value ratio) on all Higher Priced Mortgage Loans (HPML). The rule sets forth the terms under which the escrow account may be canceled, and a partial exemption for condos and PUDs where the governing association is required to purchase and maintain master insurance policies. The rule also exempts certain small creditors that operate predominantly in rural or underserved counties.

- **The 2013 RESPA and TILA Mortgage Servicing Final Rules** are effective January 10, 2014. The rules set forth minimum requirements for:
  - Error resolution and information requests (Timeframes and requirements for responses, prohibitions on fees)
  - Limits on Force-placed insurance
  - General servicing policies, procedures and requirements

- Accessing and providing timely and accurate information
- Properly evaluating loss mitigation applications
- Facilitation oversight of and compliance by, service providers
- Facilitating transfer of information during servicing transfers
- Record retention requirements
- Servicing file maintenance and production requirements
- Early intervention with delinquent consumers
  - Live customer contact requirements and timeframes
  - Requirements to provide loss mitigation options
- Continuity of contact with delinquent consumers (Single point of contact)
  - Requirements for continuity of contact personnel
  - Timeframes for assignment of personnel to delinquent consumer account
  - Scope of capabilities of continuity of contact personnel
- Loss mitigation
  - Requirements and Timeframes for acknowledging and evaluating Loss

## Mitigation Options

- Requirements for responding to consumers on incomplete loss mitigation applications
- Requirements for Appeals process
- Prohibitions and limitations on dual tracking
- Limitations on beginning or completing the foreclosure process
- Interest rate adjustment notices for ARMs
- Prompt crediting of mortgage payments and responses to requests for payoff amounts
- Periodic statement requirements for mortgage loans

The servicing rules contain an exemption for small servicers (servicing under 5,000 loans) from certain portions of the servicing rules.

In conclusion, this is the beginning of the new era of mortgage regulation by the CFPB. Taking the time to read and review the CFPB's "Small Entity Compliance Guides" in the areas that most affect your business is well worth your time and effort. Welcome to the future!



## How to Win With a Pair



By Clifford L. Cryer, SCRIP, MAI, SRPA, W. Thomas Cryer, SCRIP, SRA, and Arnold M. Schwartz, SCRIP, RM, SRA  
Originally published in the Sept. 1991 issue of Mobility, Revised May 2013, with the permission of Clifford L. Cryer  
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### Part III

THIS ARTICLE IS BEING PRESENTED IN 3 INSTALLMENTS. THIS FIRST INSTALLMENT CONSIDERED SOME BACKGROUND AND CHALLENGES RELATED TO PAIRED SALES ANALYSIS, AND REQUIREMENTS REGARDING DATA ANALYSIS AND VERIFICATION AND WAS FEATURED IN THE SUMMER 2013 DIVISION OF REAL ESTATE NEWS LETTER. THE SECOND INSTALLMENT CONSIDERED ANALYSIS OF ADJUSTMENTS FOR PHYSICAL AND NON-PHYSICAL FEATURES AND CHARACTERISTICS USING PAIRED SALES ANALYSIS. IN THE THIRD AND FINAL INSTALLMENT WE WILL SEE HOW TO COMPLETE THE SALES COMPARISON GRID UTILIZING THE RESULTS OF PAIRED SALES ANALYSIS, WHAT TO DO WHEN CURRENT MARKET DATA IS LACKING, AND DOCUMENTING YOUR ANALYSIS.

## SUMMARY OF ADJUSTMENTS

We can now summarize some of the adjustments extracted from the market by our paired sales analysis:

Changes in Market Conditions (Date/Time)	About 1% per month
Seller concessions	Dollar-for-dollar, 2% of loan (\$3,000)
Central air conditioning	About \$2,100 (\$2,000 is also arguable)
Basement finish	About \$5,300 to \$5,400 (\$5,500 is also arguable)

While the argument exists that some of the initial adjustment extractions rely on appraisers' judgment, a check can be made on initial comparisons by inserting some of the contributory values of physical features (found

later in the paired sales analysis) into the paired sales analysis and working backward to the market change adjustments. If this is done, one will find that the approximately 1% per month market change extraction is closely approximated. This tends to refute the circular logic argument about paired sales.

Since this is a "how to" article, the next step illustrates how to put this data to work in filling out the adjustment section of the single family residential form report.

### COMPLETING THE SALES COMPARISON GRID

The adjustments we have extracted using paired sales analysis and the resulting indications of value can be seen in the following Illustration 2 – Sales Comparison Grid (Completed). The appraiser has reconciled the adjustments to the nearest \$100. It may, in some cases, be appropriate to

reconcile adjustments with different rounding amounts.

**Comparable 1** needs only one adjustment to indicate a "most probable sale price" for the subject:

1. A downward adjustment of 1% is indicated for the market conditions change (time adjustment). The "meeting of minds" occurred one month ago. This adjustment is applied to the contract sale price. (Note: Time adjustments are based on the contract date, not the sale date. The contract date can generally be found by analyzing the MLS listing history for the sale, and verifying this date with the listing or selling broker for the transaction.)

**Comparable 2** has two differences needing adjustment to indicate a "most probable sale price" for the subject:

1. A downward adjustment of 2% is indicated for the market conditions





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## Two of a Pair Continued

### ILLUSTRATION 2 – SALES COMPARISON GRID (COMPLETED)

	SUBJECT	COMPARABLE 1	COMPARABLE 2	COMPARABLE 3
SALE PRICE	-	\$164,000	\$163,500	\$175,000
FINANCING TERMS AND SELLER CONCESSIONS	NONE	\$0	\$0	\$3,000
ADJUSTED SALE PRICE	-	\$164,000	\$163,500	\$172,500
TYPICAL CONDITIONS OF SALE (ARM'S LENGTH, TYPICAL MOTIVATION)	YES	\$0	\$0	\$0
ADJUSTED SALE PRICE	-	\$164,000	\$163,500	\$172,500
CONTRACT DATE ("MEETING OF THE MINDS")	-	1 MONTH PRIOR	2 MONTHS PRIOR	4 MONTHS PRIOR
CHANGES IN MARKET CONDITIONS	-	1% - <u>1,640</u>	2% - <u>3,270</u>	4% - <u>\$6,900</u>
ADJUSTED SALE PRICE	-	\$162,360	\$160,230	\$165,600
CENTRAL AIR CONDITIONING	YES	(Yes)	(No) <u>2,100</u>	(No) 2,100
BASEMENT FINISH	No	(No)	(No)	(Yes) <u>-5,400</u>
ADJUSTED SALE PRICE	-	<u>\$162,360</u>	<u>\$162,330</u>	<u>\$162,300</u>

change (time). The "meeting of minds" was two months ago. This is applied to the contract sale price.

2. This sale lacks central air conditioning, which the subject has. Therefore, an upward adjustment is needed. The extracted contributory value of that item has been estimated to be about \$2,100.

**Comparable 3** has four differences to adjust to indicate a value for the subject:

1. An adjustment for cash equivalency is



indicated. The seller paid \$3,000 in concessions. The "cash equivalent" sale price would have been \$3,000 less; thus the adjustment is made "dollar for dollar" in this case.

2. A downward adjustment of 4% is indicated for the market conditions change since the "meeting of the minds" (contract date) four months ago. This is applied to the contract sale price less the deduction for "cash equivalent."

3. Like Comparable 2, this sale lacks central air conditioning, valued at about \$2,100.

4. The indicated value of the basement finish is about \$5,400.

This is an amenity that Comparable 3 has but the subject lacks. A negative or downward adjustment appears appropriate.

Once the three comparables are adjusted for differences with the subject, their adjusted sale prices each provide an indication of the "most probable sale price" for the subject.

The adjusted sale prices of the three comparables provide the following indications of the "most probable sale price" for the subject property:

Comparable 1 \$162,360  
Comparable 2 \$162,330  
Comparable 3 \$162,300

In "real life" the appraiser would attempt to use more than three sales to derive and support paired sales adjustments, and would preferably use sales that were not used in the sales comparison grid to avoid introducing "inbreeding" of data where the independence of the data is lost.

"Real-life" results? You bet! These indications are reconciled easily to \$162,350. Comparable 3 has the most adjustments for differences, the least recent sale date, and seller-paid concessions. Add to those differences the macroeconomic influence of a "down market," and the most supportable, final value estimate becomes even more apparent.

The overall tightness of the indicated range of value in itself becomes a statement regarding the accuracy and appropriateness of the market-based adjustments applied in the analysis. A wide range of adjusted sale prices is often a clue that the appraiser may have overlooked one or more value-influencing factors (elements of comparison) in the sales comparison analysis, or that the adjustments applied may not be reflective of the market.

### WHEN CURRENT DATA IS LACKING

As previously mentioned in the introduction to this article, appraisers would preferably use sales that were not used in our sales comparison grid



## *Two of a Pair Continued*

to avoid introducing “inbreeding” of data. More typically, our analysis would be based on recent resales of similar sales in the subject neighborhood or competing neighborhoods. However, such current data may be lacking in some markets. In this instance, the appraiser has several options to develop credible pairings:]

- Go back in time to locate sales from which to develop paired comparisons. Adjust these as necessary for changes in market conditions.
- Develop pairings from another market area. Adjust these as necessary for differences in location. In this instance, it may be advisable to express the results of the pairings as percentages which can then be converted to a dollar amount and applied as an adjustment in the sales comparison grid for the subject analysis.
- In some extreme cases, the appraiser may find it necessary to develop pairings from data within the sales comparison grid, and extract one or more adjustments from the data in the grid after other adjustments have been made. The same basic process as described in this document can be applied to arrive at credible results from analysis of market-based data. As previously noted in *Appraising Residential Properties*, 4th Edition, “the appraiser makes a series of paired data

identifications and repeated adjustments.”

In the above situations, it is imperative that commentary be made within the report explaining that current data within the subject’s market was not available to develop pairings, along with a summary of the analysis that was performed. When pairings are developed from data within the sales comparison grid, the appraiser should explain the rationale for each adjustment and how the sales support them.

There may be circumstances when market data for paired sales analysis is simply not available, or the quality of the data is so poor that paired sales analysis would not render credible results. In these circumstances, the appraiser should use an alternative method of analyzing market data. This may include statistical analysis, conversations with market participants such as real estate brokers, buyers, sellers, developers and investors, qualitative analysis, or other methods of analyzing the limited market data. In this manner, appraisers can integrate their experience and judgment with analysis of what sparse market data may be available.

Additionally, in circumstances where data is limited, a best practice may be to apply a “test of reasonableness” to your conclusions. This can be accomplished by utilizing an alternative technique, such as depreciated cost, or capitalizing the difference in rental

income from properties with and without a particular amenity. This analysis can aid in confirming whether or not your conclusions drawn from limited market data are reasonable. Ideally, the sales comparison grid and resulting indications will support the conclusions drawn from your analysis of the limited data. In circumstances where market data is limited, it is imperative that the appraiser support all conclusions with adequate workfile data, and provide sufficient commentary to explain to the intended users how conclusions and opinions were derived from the limited data that was available.

### **DOCUMENTATION**

**Workfile:** USPAP’s Record Keeping Rule requires that the appraiser retain in the workfile all data, information and documentation necessary to support their opinions and conclusions and to show compliance with USPAP. Therefore, the workfile should contain the MLS listings and/or other market-based data that was used in developing paired sales and other opinions and conclusions, along with actual calculations made by the appraiser (or references to the location of such data so that it can be retrieved if needed later).

Since your paired analysis research has the potential to be reused in multiple appraisal assignments, a best practice may be to keep a file, separate from your workfiles, in which to store the paired sales data and your conclusions.



## *Two of a Pair Continued*

This file can be either paper or electronic, and indexed by market areas or features/amenities. Maintaining this file will keep you from having to go through old workfiles trying to locate the research you did weeks or months ago, or worse yet, permanently losing track of the research. When data from the paired sales file is used in an assignment, simply copy the relevant data and place in your workfile, or place a reference to the location of the data in the workfile. (Note: When referencing the location of data, you will need to ensure that the data stored outside of the workfile, such as in a paired sales file, is available for the entire duration of time required by the Record Keeping Rule.)

### **Summary in the Appraisal Report:**

Further, for a summary appraisal report, Standards Rule 2-2(b)(viii) requires that the appraiser address three components by summarizing:

1. the information analyzed,
2. the appraisal methods and techniques employed, and
3. the reasoning that supports the analyses, opinions, and conclusions.

The summary required by Standards Rule 2-2(b)(viii) relates directly to the scope of work that the appraiser, in communication with the client, determined was necessary to develop credible assignment results. Scope of work includes the type and extent of data researched and analyses applied to arrive at opinions or conclusions. Therefore, the appraiser's summary should include commentary on the data analyzed and the analyses applied as part of the scope of work in developing the assignment.

This summary should indicate that the appraiser complied with the development requirements of Standard 1. With specific reference to paired sales analysis, the commentary should indicate compliance with Standards Rules 1-4 and 1-4(a) which requires that an appraiser "collect, verify, and analyze all information necessary for credible assignment results" and "analyze such

comparable sales data as are available to indicate a value conclusion."

It is important to keep in mind that an intended user of the appraisal report may not be sophisticated enough to understand an adjustment by looking at the grid itself. Therefore, the appraiser's summary should enable the client and intended users to understand the rationale for the opinions and conclusions contained in the report by including a discussion of the process used to develop a paired sales analysis. This can be done by addressing the 3 components of summarizing noted above.

### **CONCLUSION**

We have combined paired sales and its application into our "how to" lesson. Now, it is your turn to play your hand and take advantage of the pairs you are dealt to derive better, more supportable, market-driven adjustments, even if you do have a "full house" of adjustments to make.

## *How to Win With a Pair*

